

SAFSS

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE SYSTEMS COMMAND
ANDREWS AIR FORCE BASE, WASHINGTON, D.C. 20331



16 MAR 1966

TAB 100

REPLY TO
ATTN OF: SCJ

SUBJECT: Report on National Space Law Seminar (1966)

TO: MSF

1. Attached is a copy of a report on the National Space Law Seminar prepared by Major General Richard C. Hagan, USAFRes, which I feel will be of interest to you.

2. Of special interest may be a summarization of USSR Governing Principles on page 2, Mr. Karpov's comment on MOL, page 4, and some specifics of International Cooperation beginning on page 9.

A handwritten signature in cursive script, likely belonging to A. W. Tolen, is positioned above the typed name.

A. W. TOLEN, Brigadier General, USAF
Staff Judge Advocate

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Rpt on Natl Space Law
Seminar (1966)

FORGING MILITARY SPACEPOWER

REPORT ON NATIONAL SPACE LAW SEMINAR (1966)
BY RICHARD C. HAGAN, MAJOR GENERAL, AIR FORCE RESERVE

Princeton University and The Federal Bar Association presented a Second National Space Law Seminar at Lowrie House on Friday, February 18, 1966. The Seminar Chairman, Mr. Harold Berger, National Chairman, Federal Bar Association Committee on Space Law, opened the meeting at 2:00 P. M. A list of participants is attached.

Present as special guests were: Mr. Victor P. Karpov, Counselor, Embassy of the Union of Soviet Socialist Republics; and, Mr. Alexander Kokorev.

The Moderator of the Seminar, Mr. Andrew G. Haley, General Counsel, International Astronautical Federation, presided and introduced Mr. Karpov as the first speaker.

USSR Presentation

Mr. Karpov made the following comments. He undertook to outline current Soviet attitudes on Space Law, a presentation of the views of Soviet lawyers. He spoke exceptionally well in English, using notes to deliver his remarks. He did not read his remarks. He disclaimed being a space legal authority although he acknowledged being a lawyer.

Limited Application of Terrestrial Principles - After noting that space law was very young, having been born only nine years ago, he discussed the position of space law in international law, uttering the hope that a convention on space law could be reached with which he, then, as a lawyer, could work. He analogized the problems to those on the high seas, underscoring the fact that measures should be taken to see that there was no military use of outer space. He said that earth principles of law could not be mechanically applied to outer space, that we must take into consideration its peculiar problems and make intelligent application of principles of international law to outer space. He said, for example, that not all the resolutions of the UN would be applicable to outer space, not each provision of

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the UN Charter, for there are some which obviously could not have application to outer space. He cited with approval the views of the Indian Delegate with reference to peace in outer space. On earth, he said, we inherited the usages of international law but we have not inherited these in outer space. This requires the cooperation of all nations operating in outer space exploration.

USSR Governing Principles - Referring to a Declaration of Principles put forth by the Soviet Union in the Legal Subcommittee of the UN Committee on Peaceful Uses of Outer Space in May and June, 1962, he proceeded to a detailed elucidation and description of these principles.

Mr. Karpov summarized these principles as follows: (1) exploration and use of outer space shall be for all mankind, and there shall be no claim for its use by one nation, for example, space and celestial bodies are for the use of all, and, as a result, the Soviets do not claim any part of the moon by virtue of Luna 9, citing Professor Keldysh; (2) all nations have a right to the use of outer space; (3) all principles governing outer space should be in accord with the provisions of the UN Charter and the principles of international law; (4) scientific and technical achievements in outer space should be for all peoples and in the interest of friendly relations; (5) cooperation and mutual assistance in outer space are necessary; (6) projects in outer space would not be carried out without permission of other nations (Mr. K. would underscore this point); (7) all activity in outer space should be carried out only by governmental or state authorities, because international cooperation necessitates a most responsible and cautious attitude and parties; (8) under the thesis of opposing "spies in the sky", all activities of an intelligence gathering character should be opposed; and (9) all space ships found outside of the frontiers of the launching state would be returned to the launching state, except for those employed for illegal use of space, in which instance the space ship or the container would

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not be returned. (For comparison, here is the statement from the Declaration of Principles tabled by the Soviet Government in the 1962 meeting: (1) certain principles expressed in the United Nations Resolution 1721 (XVI), December 20, 1961, were expressed in different wording; (2) a prohibition against the use of outer space for "propagating war, national or racial hatred or enmity between nations"; (3) prior discussion and agreement would be required between countries concerning any use that might "hinder the exploration of outer space for peaceful purposes"; (3) all space activities shall be conducted by States which retain sovereignty over their vehicles; (4) collection of intelligence information by satellites is incompatible with mankind's space objectives; and, (5) spacecraft and their crews shall be given any emergency assistance required and returned to the State of origin. In their then (1962) second proposal, the USSR, in a paper entitled "International Agreement on the Rescue of Astronauts and Spaceships making Emergency Landings", set forth the kind of assistance and methods to be employed by the Contracting States in helping spacecraft and their crews under emergency conditions. The assisting States would be reimbursed by those responsible for the launchings. Provision was made for the early return of astronauts and space objects to their home base, except that "space vehicles aboard which devices have been discovered for the collection of intelligence information in the territory of another State shall not be returned.")

Claims to space or celestial bodies - citing with approval Professor Keldysh, Soviet Academy of Sciences President, with reference to Luna 9 (soft-landing moon vehicle), Mr. Karpov said: that the Soviet Union does not claim any part of outer space; that Luna 9 did not give rise to a claim on the moon; but that the Soviet Union did own and lay claim to Luna 9 itself. He noted that all scientific and technical achievements were for all peoples of the earth and in the interest of friendly relations.

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Cooperation and mutual assistance - he spoke of the value of cooperation and mutual assistance in outer space. He underlined the proposition that projects in outer space should not be carried out without the prior permission of other nations. He deduced that all activity in space should be carried out by governments, or by governmental or state authorities. He said that international cooperation necessitates most responsible and cautious attitudes and parties, and hence governmental entities, noting that television and communication usages of outer space could interfere with space exploration by responsible parties.

He opposed "spies in the sky", prohibiting or banning all activities of an information gathering character.

Return of Space Ships - he agreed that all space ships should be returned to the launching state, except for those which had committed an illegal use of space (information containers and the space craft would not be returned.)

He stressed the need for cooperation between the Soviet Union and the United States in space, saying that there is some, and that there is need for more, both cooperation and mutual understanding. He then turned to the Manned Orbiting Laboratory.

Manned Orbiting Laboratory - Mr. Karpov said that the Manned Orbiting Laboratory, from the point of view of Soviet Scientists and Lawyers, was incompatible with cooperation and use of space for all mankind. If this use expands, prospects of future cooperation in space and space law would diminish. In final analysis, it was up to the United States Government but they must realize that MOL would hinder cooperation with the Soviet.

"Peaceful Use" of Outer Space - Mr. Karpov noted that the "peaceful use" of outer space had been interpreted by many nations, including the United States, to mean "non-aggressive" user. This is not enough. Such use must be without military purposes. In other words, any use of space by military personnel, or in furtherance

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of military purpose should be prohibited, and, thereby, through peaceful uses, more peaceful cooperation between the Soviet Union and the USA would be possible.

On this note, Mr. Karpov ended his principal presentation. But questions were addressed to him as will be noted hereafter.

Mr. Haley, the Moderator, then proceeded to read a list of Soviet firsts in space, paying tribute to the accomplishments of the Soviet Union in space exploration.

Symbolic Acts of Sovereignty and Treaties

Professor John Cobb Cooper, dean of American space lawyers, then spoke concerning the "symbolic acts of sovereignty". He raised the question of what types of action could be considered as a basis of sovereignty claim. He said that he approved the principle of non-sovereign claims as established in the UN Resolution 1721 (XVI) December 20, 1961. He noted, quite pointedly, that a "declaration of intent" is unilateral and can be set aside on a change of circumstances. He further noted that treaties have been, for all practical purposes, set aside, e. g. Punic Wars and Carthage. He called for a formal international agreement to govern the right to possession of an area as distinguished from the whole, e. g., Soviet claim to a part. He hoped that we would have a Convention to prevent us from asserting, or denying, or deciding sovereignty claims and questions later. He noted that perhaps a laboratory on the moon could be established for the use of all people, with no sovereign claim to the ground on which it would stand. He forecast that lawyers now have the chance to prevent kinks in outer space, saying that the only way was through a convention against sovereignty on stellar bodies.

National Controls and Safety

Brigadier General Martin Menter, speaking as an individual and after recanvassing various historical facts, supported the position of Professor Cooper with

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reference to a convention prohibiting sovereignty on stellar bodies. He favored international cooperation through the UN. He cited paragraph 5, UN Resolution 1962 (XVIII) and stated that we do have governmental responsibility thereunder. General Menter underscored the necessity for assurance of safety of flight, including the safe passage of space craft. He noted that future use of space craft between one terrestrial point and another would necessitate the maintenance of controls for safety reasons. He continued, however, that nations should reach accord on the use of celestial bodies, the resolution of disputes, the application of criminal and civil laws, the use of minerals (including mining rights), and raised the question of what laws should be applied, saying that we should give some thought to that. General Menter prophesied international cooperation in space. After alluding to the necessity for effective occupation under the traditional concept of sovereignty, he said that we need to work out the problems we see.

Mr. Summerfield, then called on by the Moderator, disclaimed any special comment in the space law field at the time.

Professor Goldie discussed the "Pent House Studies" on the West Coast.

Professor Dowd pointed out the need for definitions of objects etc. which are so subject to change but are generally encompassed under the term "Administrative law". He raised the question of whether we can develop a going concern in space law under administrative law.

New Uses and Private Users

Mr. Summerfield then called attention to the fact that man would be moving into outer space for other uses, new uses. For example, he noted the use of a satellite for the University of California to communicate with its various divisions as a possibility. He opined that there could be a private user of outer space without endangering relations between nation states. Commenting on military he said that it was difficult to differentiate between terrestrial

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terrestrial segment.

The Moderator, Mr. Haley, then referred to the use of frequencies problem which man is now encountering and queried about the additional use by the private sector in the manner suggested. He extended congratulations to Harold Berger on the organization and holding of the Seminar. Noting the problem of the mass transportation of peoples, Mr. Haley then called on Mr. David Berger, Harold's brother, to comment on his problems.

Applicability of Space Technology to the Solution of Terrestrial Traffic Problems

Mr. David Berger, noting his experience in urban problems, said that the electronics systems developed for use in space would have applicability in the solution of man's traffic problems in Megalopolis. He pointed out that the dynamic approach of space technology had much to offer for earth transport, taking a leaf from the space person's books. He raised the question of what such developments would mean to the law. Would they require new governmental approaches? What of region, inter-state and national compacts? He said that the point of departure, as in space, should be that man cannot permit international legal problems to halt progress. So with his mass transport problems here on earth. He thought that there would be some borrowing of outer space technologies in (1) waste disposal, (2) crime prevention, (3) transportation, etc.

Control of Nuclear Weapons in Space

Mr. Herbert Ries of the Department of State reviewed the so-called Declaration of Principles, noting the various national reactions which had appeared during the course of the UN debates. He recounted the views of the USSR and the USA as expressed at those meetings. He noted the value of the dialogue between the USSR and the USA, and that the USA would consider the principles of law laid down in the UN Resolution as principles of international law, including the agreement not to orbit weapons of mass destruction. Mr. Ries stated that this principle was

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definitely tied to problems of control of nuclear weapons, e. g. expense and accuracy, and hence tied to arms control and disarmament in which forum such controls could more properly be discussed.

Mr. Haley, the Moderator, commented on private use of space and the use of space by COMSAT. He spoke of UNESCO and mining problems.

A Priori vs. Factual Definitions

General Hagan, in response to Mr. Haley's query as to his personal comment on mining on celestial bodies, said that he had not studied the problem and did not feel qualified to discourse on the matter until he had given some thought to it. In fact, he said that he was loath to embark on the a priori final solution of conceived problems in advance of having some of the facts assisting in defining the problem. The Moderator interrupted with the query as to whether Mr. Hagan was disagreeing with the noted authority, Dr. Cooper. This Mr. Hagan denied, but said that what he meant to say was that he found the facts always helped in defining the problems, while general principles furnished the key to open the solution to the problems once they were defined. This touched off much comment around the table between the a priori legalists and the more positivistic legalists.

Subsequent USSR Comments

Mr. Karpov made additional comments that Luna 9 was no sign board of possession and occupation of the moon by the USSR. Only Luna 9, itself, would be the property of the USSR. He reiterated -- no claim, no claim. He continued by noting that the USSR had sought to achieve a wedding of the views of scientists and lawyers, resulting in a committee in the USSR. He noted the cooperation and modus operandi in Antarctica, suggesting the feasibility of such an arrangement with reference to cooperation on the moon and other celestial bodies. Commenting on the suggestion of the University of California's possible use of a satellite as a method of communication, he called it an "interesting experiment". He again reverted to his

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earlier theme of strict regulation of every activity in space, so that the ensuing activity would not be incompatible with man's general aims and would be in conformity with the general interest, and the good of all mankind. Agreement as to general principles in outer space would provide the basis for space law.

COMSAT - when queried as to the Soviet attitude on COMSAT, Mr. Karpov replied that the US principles with reference to COMSAT are far enough from USSR principles as to prevent USSR cooperating, and causing the USSR to adopt a wait-and-see attitude. The US position from the beginning, with reference to COMSAT, was such as to preclude the equal participation of the USSR, the predominant position of the USA precluded USSR participation. In addition, COMSAT was a private corporation. This was the reason the Soviet is trying to develop its own system of communication via satellites.

Specifics of International Cooperation

Over the serious objection of the Moderator, General Hagan queried Mr. Karpov with reference to specific areas of international cooperation "in the interest of all mankind", acknowledging that the two great nations in space could surely probe the various possible areas of vital cooperation. Evading the query, Mr. Karpov asked what General Hagan meant. General Hagan said that the general formula was one with which most men could agree but its meaning would have to be developed by exploring various specific examples. The Moderator tried to close this line of inquiry by saying that all of these areas had been covered in the Dryden-Blagonravov talks. General Hagan evaded by saying that evidently Mr. Karpov might have some new suggestions. Mr. Karpov then said that the USSR and the USA could cooperate in weather exchange. When pushed for another example, he said that perhaps they could cooperate in (2) (an area now under discussion) and "other cooperation like that". General Hagan then asked what is "other cooperation like that?" Mr. Karpov could not come up with any more. Then he was asked if cooperation

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could be achieved with reference to "new design". "New design of what?" he questioned. It was then specified "new design of space craft". A slow smile spread over Mr. Karpov's face, and he said, "No, that wouldn't be possible." He elaborated, in response to the question "why?", that the General knew perhaps better than anyone why that would be impossible, and admitted that it was for military reasons. He was then asked by General Hagan for another form of specific cooperation, and then, one step ahead of the Moderator, it was suggested to Mr. Karpov that perhaps cooperation could come in the field of propellants, saving everyone costs of all types. This he denied as being possible and for the same reason, "military reasons".

Mandl's Early Statement

The Moderator rang the curtain down on this line of inquiry and called on Dr. William S. Strauss. Dr. Strauss called attention to the earliest exposition of legal principles in space exploration, Mandl's early 1900s publication. He related how this monograph had been preserved in the Library of Congress and how precisely and well Mandl had anticipated the legal problems of space exploration.

Generalized Commentary

Dr. Goldman noted that all types and fields of the various disciplines should be brought to bear on the problems which man will encounter in space exploration.

Mr. Paul Dembling underscored the position that principles of law in relation to space exploration have value in discussion, and in anticipation of occurrence of the facts.

Professor Goldie of Australia commented that there are areas of preventive law which can now be explored and adopted and he said that facultative laws must know the nature of the subject matter. He thought that Articles 5 and 8 of the UN Resolution point to the expectation of mankind. He admitted that general principles were usually not effective until procedures had been worked out.

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Mr. Haley, the Moderator, then closed the seminar and invited all participants to the cocktail party and dinner which would follow.

Evaluation - The Seminar centered principally around the views of Mr. Karpov, reflecting the ideas of the USSR. It is surprising that ideas put forward by the Soviet Union in 1962 and which had not found footing to any great extent in the community of nations should have made no greater change than was evidenced in the seminar. The views with reference to COMSAT, spy in the sky, return of space ships and crews, use of space, cooperation in space exploration, illegal uses of space, military uses of space -- all these are the traditional viewpoints of the USSR, and purported to be those of their scientists and lawyers. Mr. Karpov, in the spirit of good will which pervaded the meeting, was the center piece, and seemed to carry with him many of the participants who appeared reluctant to probe or debate (discuss) with him the merits of the various ideas presented by him. In fact, the impression was one of the genial host who would not invade the sanctity of his guests ideas because of the guest's presence in the home. It can be safely concluded that the USSR is not ready to put forward any new thoughts on international cooperation, and is living within the limitations which its own interests impose.

If, as was proposed, representatives of other nations are invited to participate in future seminars (and there was much favorable discussion of this point of view), there must be a free exchange of ideas if the seminars are to be meaningful. This free exchange must be made clear to all participants prior to acceptance of their invitations to participate.

Some of the thoughts expressed with reference to cultural and historical factors in understanding the problems of space exploration, as settings for the

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legal implications, could fruitfully be developed in future seminars.

The congenial atmosphere among professionally interested persons in this afternoon and evening at the Lowrie House should augur well for a repetition of similar meetings.

NATIONAL SPACE LAW SEMINAR

List of Participants

Seminar Chairman:

Harold Berger, National Chairman, Federal Bar Association Committee on Space Law

Moderators:

Andrew G. Haley, General Counsel, International Astronautical Federation

Program Planning Committee and Seminar Discussion:

Harold Berger, National Chairman, Federal Bar Association Committee on Space Law

Lawrence R. Caruso, Legal Counsel, Princeton University

Richard C. Hagan, Major General, United States Air Force *Reserve*

Andrew G. Haley, General Counsel, International Astronautical Federation

Herbert Ries, United States Department of State

Martin Menter, Brigadier General, United States Air Force

Seminar Discussion:

John Cobb Cooper, Past President, International Institute of Space Law

Paul Dembling, Deputy General Counsel, National Aeronautics and Space Administration

Donald W. Dowd, Professor of Law, Villanova University

Richard L. Fruchterman, Jr., Lieutenant Commander, United States Navy

L. F. E. Goldie, Professor of Law, Loyola University Law School of Los Angeles

Dr. Eric F. Goldman, Professor of History, Princeton University

S. Houston Lay, Director of International Affairs and the Legal Profession
Program, American Bar Foundation

Noyes Leech, Professor of Law, University of Pennsylvania

Dr. Courtland D. Perkins, Professor of Aeronautical Engineering, Princeton Univ.

Walter D. Reed, Lt. Colonel, United States Air Force

E. J. Spielman, Chief Counsel, National Aeronautics and Space Administration,
Western Operations Office

William S. Strauss, Assistant to General Counsel, The Library of Congress

Dr. Martin Summerfield, Professor of Aeronautical Engineering, Princeton University; Past President of the American Rocket Society

Dr. John Wm. Whelan, Professor of Law, Georgetown University

Ex Officio:

David Berger, Past Chancellor, Philadelphia Bar Association; Former city
Solicitor of Philadelphia

James McI. Henderson, General Counsel, Federal Trade Commission

A. S. Harzenstein, National Vice President, The Federal Bar Association

Mervyn R. Turk, Colonel, United States Army, Retired